

LINCOLN RESOURCES, INC.

IBLA 82-486

Decided August 24, 1982

Appeal from a decision of the California State Office, Bureau of Land Management, declaring null and void ab initio two mining claims and part of a third. CA MC 36867 through CA MC 36869.

Affirmed as modified and remanded.

1. Mining Claims: Powersite--Mining Claims: Withdrawn Land
--Mining Claims Rights Restoration Act--Powersite Lands
--Withdrawals and Reservations: Powersites

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

APPEARANCES: Geoffrey R. Quin, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Geoffrey R. Quin appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated February 5, 1982, declaring null and void ab initio the Empire Mine Ex. No. 1 and the Blue Bird quartz mining claims and part of the Key Mine quartz mining claim. Location certificates filed with BLM indicate that these claims were located on June 24, 25, and 26, 1926, respectively. At the time of location, a Federal Power Commission order, dated March 14, 1921, was in effect withdrawing for power project 187 the lands occupied by the Empire Mine Ex. No. 1 and Blue Bird claims and by at least part of the Key Mine claim.

Prior to its February 5 decision, BLM informed appellant by letter of December 8, 1981, that the claims had been located on withdrawn lands, but suggested nevertheless that the claims might be valid under the provisions of P.L. 359, the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. §§ 621-625 (1976). This Act provides that

[a]ll public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power

sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes

provided such lands are not included in certain projects set forth in the Act. Under 30 U.S.C. § 623 (1976), the owner of an unpatented mining claim described in section 621 was required to file, inter alia, "within one year of August 11, 1955, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim." ^{1/} BLM suggested to appellant that in the absence of such filings he might rely on 30 U.S.C. § 38 (1976) to establish location. Under section 38, a person who has held and worked a mining claim for a period of time equal to the statute of limitations for mining claims of the state where the claim is located is deemed to have made a location, provided that during the time of holding, the land was open to mining location. Gardner C. McFarland, 8 IBLA 56 (1972). As this Board stated in Arthur W. Boone, supra, holding and working a mining claim in open, notorious, adverse possession for the period of time required to establish adverse possession of a mining claim, while the land is open to mining location, is regarded as tantamount to a new location or relocation, dispensing with proof of valid notices.

California has a 5-year statute of limitations for mining claims. BLM stated to appellant that it could accept the original location notices for recordation if appellant could prove that he worked the claims during the 5-year period of the statute of limitations; proof of his activity might take the form of assessment work notices for the years 1955-60, assay reports, or any other documents that appellant believed provided evidence of his holding and working the claims during this period. Upon appellant's failure to respond to this suggestion, BLM issued its February 5 decision.

In his statement of reasons, appellant maintains that the claims at issue were held and worked in good faith during the 5-year period following August 11, 1955, and, indeed, had been worked continuously since 1926. Appellant states that he is unable to submit proof of labor for the years 1955-60 because such evidence was not filed due to human error.

[1] BLM correctly declared null and void ab initio the entire Empire Mine Ex. No. 1 and Blue Bird quartz mining claims and so much of the Key Mine quartz mining claim as overlaps the Federal Power Commission order of March 14, 1921. Although P.L. 359 opened certain lands within power site withdrawals to mineral entry, it did not resuscitate claims which had been located on withdrawn lands prior to the date of the Act, August 11, 1955.

^{1/} Although the notices of location for these claims were not filed under 30 U.S.C. § 623 (1976) prior to the time they were filed with BLM in September of 1979 pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to file pursuant to 30 U.S.C. § 623 (1976), as contrasted with failure to file timely under 43 U.S.C. § 1744 (1976), has been held to be an insufficient reason for forfeiting a mining claim located on powersite lands. MacDonald v. Best, 186 F. Supp. 217 (D. Cal. 1960); Arthur W. Boone, 32 IBLA 305, 310 n.3 (1977).

Beverly Trull, 25 IBLA 157 (1976). We believe, however, that BLM's December 8 letter may have misled appellant into believing that his proof under section 38 must focus on the years 1955-60, rather than any 5-year period while location was possible. Though we affirm BLM's holding that the claims were null and void ab initio when located in 1926, we remand the case file to BLM to allow appellant a reasonable time within which to make his proof under section 38 for any 5-year period while the lands were open to location. 2/

Shortly before BLM's December 8, 1981, letter to appellant, an "amended" location notice of the Blue Bird claim was filed with BLM by Richard D. Leer. 3/ Maps of all of the claims at issue accompanied this filing, received by BLM on November 20, 1981. The date of the amended location of the Blue Bird claim is set forth as November 12, 1981. Although an amended location relating back to the original 1926 location which was null and void ab initio would not be valid, BLM's decision did not address this location, and adjudication would be premature before it is ascertained whether appellant can establish the claims after 1955 under section 38. Failing that, it would appear that the location might be considered as a new or relocation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed as modified, and the case file is remanded to BLM for action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ BLM's Feb. 5 decision noted that the Empire Mine Ex. No. 1 occupies land contained in Mineral Survey 561 B, Patent No. 2765, issued Mar. 9, 1878, to Nathaniel Gray with no minerals reserved to the United States. Any effort by appellant to locate the Empire Mine Ex. No. 1 must take this fact into consideration.

Appellant is cautioned that this Board has never held that affidavits of assessment work are sufficient evidence to establish that a claimant has "held and worked" a claim under section 38. See Brattain Contractors, Inc., 37 IBLA 233, 243 (1978).

3/ Leer filed this notice on behalf of Robert Boyer. Boyer and Geoffrey R. Quin are named as owners of the three claims at issue in assessment work notices filed with BLM for the 1979 and 1980 assessment years.

